

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re Zydus Unsolicited Fax Litigation

)
) Case No. 13-cv-3105
)
) Hon. Sara L. Ellis
)

**PLAINTIFF’S UNOPPOSED MOTION FOR AN EXTENSION
TO FILE PAPERS REGARDING A NEW CLASS ACTION SETTLEMENT**

Plaintiff Advanced Arlington Sports Medicine Center (“Plaintiff”) hereby advises the Court that Plaintiff and Defendant Zydus Pharmaceuticals (USA) Inc. (“Zydus”) (collectively, the “Parties”) have agreed to present a *new* settlement to the Court. For reasons detailed below, Plaintiff requests twenty-one (21) days to file a motion in support of preliminary approval of the new settlement and that the Court strike as moot the current deadline of January 15 (to submit papers in support of final approval of the *old* settlement). In further support, Plaintiff states:

1. On March 14, 2014, Judge Grady granted preliminary approval of the Settlement. (Docket No. 43.) On July 9, Plaintiff filed its motions in support of final approval and for an award of fees and costs. (Docket Nos. 46, 47.)

2. On November 10, this matter was reassigned to Judge Ellis. (Docket No. 51.) On November 11, Plaintiff re-noticed its motions before this Court. (Docket No. 52.)

3. The Court continued Plaintiff’s motions to December 17. (Docket No. 54.) By that point, the settlement had been effectuated, the notices had been sent, and the claims had been filed.

4. At the December 17 hearing, the Court raised concerns regarding the settlement based on the Seventh Circuit’s recent decisions in *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir. 2014), *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014), *Pearson v. NBTY, Inc.*, 772

F.3d 778 (7th Cir. 2014). Each of those decisions was issued *after* the Parties negotiated the original settlement and *after* that settlement received preliminary approval from Judge Grady.

5. During the hearing, Plaintiff's counsel took the position that the settlement was worthy of final approval even under the standards set forth *Pella*, *RadioShack*, and *NBTY* (and under Federal Rule of Civil Procedure 23). And even now, Plaintiff's counsel believes the settlement meets those standards.

6. However, the Parties do not wish to put this Court in the position of assessing the merits of a settlement which is even *questionable* under the new, current standards (as opposed to the standards that existed at the time the settlement was first negotiated and executed).

7. The Parties have spent the last several weeks negotiating a new settlement structure that addresses *all* of the concerns raised by the Court at the December 17 hearing, and are very close to finalizing this new settlement.

8. Accordingly, Plaintiff requests the Court strike the current deadline of January 15 to file papers in further support of final approval (of the old settlement) and, instead, provide the Parties with twenty-one (21) days to finalize the *new* settlement and file a motion in support thereof. That motion will be a motion for *preliminary* approval of the new, revised settlement.

9. Plaintiff will, of course, provide the Court with all details of the new settlement terms in its preliminary approval brief, once the deal is finalized. For now, Plaintiff simply wishes to advise the Court of the developments in this matter and explain the basis for requesting additional time.

10. Prior to filing this Motion, Plaintiff contacted Defendant who does not oppose the relief requested.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court enter an order:

- A. Striking the January 15, 2015 deadline to file a revised motion for final approval;
- B. Granting an extension to file papers in support of preliminary approval of a new settlement up to and including February 5, 2015; and
- C. Providing such further relief that the Court deems appropriate and just.

Dated: January 14, 2015

Respectfully submitted,

By: /s/ Joseph J. Siprut
One of the Attorneys for Plaintiff
And the Settlement Class

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **Plaintiff's Unopposed Motion For An Extension To File Papers Regarding A New Class Action Settlement** was filed this 14th day of January, 2015, via the electronic filing system of the United States District Court for the Northern District of Illinois, which will automatically serve all counsel of record.

/s/ Joseph J. Siprut

Joseph J. Siprut